

The Honorable John C. Coughenour

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON at Seattle**

**FOREMOST INSURANCE COMPANY, a
Michigan Corporation,**

Plaintiff,

vs.

**LEE and ELIZABETH THORSON, husband
and wife; KIRK THORSON; and COLLIN L.
BOGLE,**

Defendants.

No. CV 07-0243

**THORSON DEFENDANTS'
MOTION FOR LEAVE TO TAKE
PERPETUATION DEPOSITIONS
NOTED FOR 4-4-08 AT 9:00 A.M.
W/O ORAL ARGUMENT**

I. Relief Requested

Defendants **Lee Thorson, Elizabeth Thorson, and Kirk Thorson**, by and through their attorneys of record, request that the Court grant leave to take the videotaped depositions of Colin Wheeler, Neil Selah, and Hank Reiser, who reside and or/work in Baltimore, Maryland, for perpetuation purposes and for presenting at trial. This motion is made on shortened time because the trial in this matter is April 21, 2008, and because Foremost's attorneys had previously indicated that they would bring these witnesses to

**THORSON DEFENDANTS' MOTION FOR LEAVE
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(C0-07-0243 JCC) - 1**

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1 Seattle for trial (and they have now changed their minds on this), leaving a time crunch to
2 get this Order and to take the depositions prior to trial.

3
4 **II. Factual Background**

5 Defendants took the discovery depositions of Colin Wheeler, Hank Reiser, and Neil
6 Selah in October, 2007, in Baltimore, Maryland. These witnesses represented the
7 insurance company on both the coverage issues and the bad faith claims involved in this
8 suit. These discovery depositions are not optimal to present to the jury.

9 Thus, on March 17, 2008, counsel requested clarification from Foremost counsel as
10 to whether the three were coming to Seattle to testify at trial. Foremost's counsel indicated
11 that they were and there was no need to perpetuate their depositions. (Exh.¹ A) To
12 confirm this, counsel asked Foremost's counsel to acknowledge the agreement formally.
13 (Exh. B) On March 27, 2008, Foremost's counsel stated that only Mr. Wheeler would be
14 coming to Seattle. (Exh. C) Subsequent phone calls and email (to seek an agreement to
15 take the depositions by perpetuation prior to trial) have not been returned and thus counsel
16 has not stipulated to that procedure, requiring the present motion. The Notice of
17 Depositions is attached hereto, for counsel's convenience should the Court approve.

18
19 **III. Statement of Issues**

20 Does the proper presentation of witnesses at trial require perpetuating the testimony
21 of absent, out of state witnesses before trial?

22 **IV. Evidence Relied Upon**

23 Declaration of D. Jeffrey Burnham, dated March 28, 2008, and the exhibits attached
24 thereto.

V. Legal Authority

Rule 30(a)(2)(A)(ii) of the Federal Rules of Civil Procedure requires leave from the Court when seeking to take a second deposition of a witnesses. Here, good cause is shown, inasmuch as the witnesses sought to be perpetuated are out of state (Maryland) and will not be brought in as part of the plaintiff's case in chief. Thus, their testimony can only be presented by perpetuation, via video or DVD or transcript.

Request is made that these depositions take place on April 14 or sooner, so that transcripts and copies of the video or DVD can be completed prior to trial. For this reason, the motion is made on shortened time, as well, so that time for travel arrangements and for the witnesses to be present can be made.

For these reasons, this Court should grant the Defendant's Motion for Leave to Take Perpetuation Depositions. A copy of the proposed Order is provided herewith.

DATED: March 28, 2008, at Seattle, Washington.

**JOHNSON, GRAFFE,
KEAY, MONIZ & WICK, LLP**

By 

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Attorneys for the Thorson Defendants

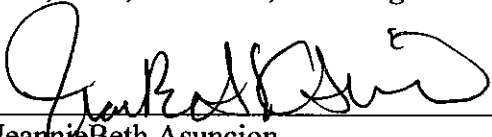
¹ "Exh." refers to the exhibits attached to the declaration of D. Jeffrey Burnham, dated March 28, 2008.

CERTIFICATE OF SERVICE

I hereby certify that a copy of Thorson Defendants' Motion for Leave to Take Perpetuation Depositions was served on all counsel of record via the Court's Electronic Filing System on March 28, 2008.

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 28th day of March, 2008, at Seattle, Washington.


Jeannie Beth Asuncion